

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

ROBERT J. COLLIER,

Plaintiff;

v.

LAND & SEA RESTAURANT
COMPANY, LLC, d/b/a FRANKIE
ROWLAND'S STEAKHOUSE,

Defendant/Third-Party Plaintiff;

v.

PERFORMANCE FOOD GROUP, INC.,
d/b/a PERFORMANCE FOOD
SERVICE - VIRGINIA,

Third-Party Defendant/Fourth-
Party Plaintiff;

v.

SAM RUST SEAFOOD, INC.,

Third-Party Defendant/Fourth-
Party Defendant/Fifth-Party
Plaintiff;

v.

CAPE COD SHELLFISH & SEAFOOD
COMPANY,

Fifth-Party Defendant;

v.

NORM BLOOM & SON, LLC,

Sixth-Party Defendant.

Civil Action No. 7:13CV104

LAND & SEA RESTAURANT
COMPANY, LLC'S REQUEST FOR
ENTRY OF DEFAULT AGAINST
SAM RUST SEAFOOD, INC.

In accordance with Federal Rule of Civil Procedure 55(a), Third-Party Plaintiff Land & Sea Restaurant Company, LLC, d/b/a Frankie Rowland's Steakhouse (Land & Sea) requests that the Clerk enter a default against Third-Party Defendant Sam Rust Seafood, Inc. (Sam Rust) on the ground that the record in this action demonstrates that Sam Rust has failed to plead or otherwise defend against Land & Sea's Second Amended Third-Party Complaint within the period prescribed by Federal Rule of Civil Procedure 12. In support of this request, Land & Sea states as follows:

1. Land & Sea's Second Amended Third-Party Complaint was filed against Sam Rust on March 19, 2014. (ECF No. 98.)

2. In its Second Amended Third-Party Complaint, Land & Sea seeks affirmative relief against Sam Rust, namely, a declaration that it must defend and indemnify Land & Sea against Plaintiff Robert J. Collier's claims, pursuant to the terms of a contract. (ECF No. 98 ¶¶ 26-45.)

3. The Court ordered Sam Rust to file a responsive pleading to Land & Sea's Second Amended Third-Party Complaint no later than ten days after March 19, 2014. (ECF No. 97.)

4. In response to the Court's order, Sam Rust filed a motion for summary judgment as to Land & Sea's Second Amended Third-Party Complaint on March 27, 2014. (ECF No. 102.)

5. The Court denied Sam Rust's motion for summary judgment as to Land & Sea's Second Amended Third-Party Complaint on July 21, 2014. (ECF No. 172.)

6. Since its motion for summary judgment as to Land & Sea's Second Amended Third-Party Complaint was denied on July 21, 2014, Sam Rust has failed to plead or otherwise defend against the Complaint, and the time for Sam Rust to do so under Rule 12 has expired.

7. Sam Rust is consequently now in default as to Land & Sea's Second Amended Third-Party Complaint

* * *

Based on the foregoing, Land & Sea requests that the Clerk enter a default against Sam Rust as to Land & Sea's Second Amended Third-Party Complaint, in accordance with Rule 55(a).

Dated: August 27, 2014

Respectfully submitted,

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*Counsel for Land & Sea Restaurant
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CERTIFICATE OF FILING

I hereby certify that on August 27, 2014, I electronically filed Land & Sea Restaurant Company, LLC's Request for Entry of Default Against Sam Rust Seafood, Inc., using the CM/ECF system, which will send notification of the filing to the following counsel of record:

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